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AAC Management Corp., Jones Lang LaSalle Americas, Inc.,
Continental Properties Company, Inc., and
Benderson Development Company, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Circuit City Stores, Inc.
et. al.,

Debtors.

Chapter 11

Case No. 08-35653-KRH

Jointly Administered

**OBJECTION OF DEVELOPERS DIVERSIFIED REALTY CORPORATION,
GENERAL GROWTH PROPERTIES, INC., WEINGARTEN REALTY INVESTORS,
BASSER-KAUFMAN, INC., PHILIPS INTERNATIONAL HOLDING CORP.,
REGENCY CENTERS, L.P., AAC MANAGEMENT CORP., JONES LANG LASALLE
AMERICAS, INC., CONTINENTAL PROPERTIES COMPANY, INC., AND
BENDERSON DEVELOPMENT COMPANY, LLC TO DEBTORS' MOTION FOR
ORDERS UNDER BANKRUPTCY CODE SECTIONS 105, 363, AND 365 (I)
APPROVING BIDDING AND AUCTION PROCEDURES FOR SALE OF UNEXPIRED
NONRESIDENTIAL REAL PROPERTY LEASES, (II) SETTING SALE HEARING
DATES AND (III) AUTHORIZING AND APPROVING (A) SALE OF CERTAIN
UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASES FREE AND CLEAR OF
ALL INTERESTS, (B) ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED
NONRESIDENTIAL REAL PROPERTY LEASES AND
(C) LEASE REJECTION PROCEDURES**

Developers Diversified Realty Corporation, General Growth Properties, Inc., Weingarten
Realty Investors, Basser-Kaufman, Inc., Philips International Holding Corp., Regency Centers,

L.P., AAC Management Corp., Jones Lang LaSalle Americas, Inc., Continental Properties Company, Inc., and Benderson Development Company, LLC (collectively, the “Landlords”), by and through their attorneys, Kelley Drye & Warren LLP, submit this objection (the “Objection”) to the Debtors’ Motion For Orders Under Bankruptcy Code Sections 105, 363, And 365 (I) Approving Bidding And Auction Procedures For Sale Of Unexpired Nonresidential Real Property Leases, (II) Setting Sale Hearing Dates And (III) Authorizing And Approving (A) Sale Of Certain Unexpired Nonresidential Real Property Leases Free And Clear Of All Interests, (B) Assumption And Assignment Of Certain Unexpired Nonresidential Real Property Leases And (C) Lease Rejection Procedures, dated February 3, 2009 (the “Motion”), and respectfully state as follows:

PRELIMINARY STATEMENT

1. The relief requested in the Motion should be denied or significantly modified because the proposed sale procedures (the “Sale Procedures”) deny Landlords any semblance of due process by depriving them of any meaningful opportunity to assess a proposed assignee, adequate assurance information, and if necessary, conduct discovery, draft an objection and prepare for a contested hearing.

2. Additionally, the Sale Procedures should be modified to allow Landlords the right to credit bid any outstanding arrearages for their Leases (defined below). The Debtors’ proposed requirement that Landlords must credit bid their entire Cure Amount¹ and waive all rejection claims is not supported by the Bankruptcy Code, and does not advance the best interests of the Debtors’ estate and general unsecured creditors.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

BACKGROUND

3. On November 10, 2008 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court.

4. Since the Petition Date, the Debtors have continued to manage their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. The Landlords are the owners or managing agents for the owners of numerous shopping centers located throughout the United States. The Debtors lease retail space from the Landlords pursuant to written leases (the “Leases”) at the locations (the “Leased Premises”) identified in the chart annexed hereto as Exhibit A.

6. The Leased Premises are located in shopping centers as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

ARGUMENT

A. The Debtors’ Sale Procedures Should Be Modified to Provide Landlords with a Reasonable Opportunity to Assess Proposed Assignees and Prepare for a Contested Hearing

7. By the Motion, the Debtors seek, among other things, authority to conduct an auction (the “Auction”) for the sale (the “Sale”) of the Debtors’ remaining leases of nonresidential real property, including the Leases. Instead of adopting uniform sale procedures that abide with due process notice requirements, and forsaking the procedural safeguards negotiated between Landlords and the Debtors for the Debtors’ prior sale efforts, the Debtors seek approval of procedures that severely constrict the Landlords’ ability to analyze potential assignee(s) for the Leases.

8. The Debtors propose a rolling schedule of lease auctions with compressed notice periods that coincide with differing dates for the conclusion of going out of business sales at the Leased Premises. The Debtors' proposed schedules are as follows:

February Lease Auction:

Bid deadline:	February 18, 2009, at 3:00 p.m. (ET);
Proposed Cure Amounts filed:	February 19, 2009;
Auction:	February 20, 2009, at 10:00 a.m. (ET);
Notice of Potential Purchaser:	On or before the business day upon the conclusion of the Auction;
Cure and adequate assurance objection deadline:	February 24, 2009, at 12:00 p.m. (ET);
Sale hearing:	February 25, 2009, at 10:00 a.m. (ET).

March Lease Auctions

Round 1

Bid deadline:	March 12, 2009, at 3:00 p.m. (ET);
Proposed Cure Amounts filed:	March 15, 2009;
Auction:	March 16, 2009, at 10:00 a.m. (ET);
Notice of Potential Purchaser:	On or before the business day upon the conclusion of the Auction;
Cure and adequate assurance objection deadline:	March 19, 2009, at 12:00 p.m. (ET);
Sale hearing:	March 20, 2009, at 10:00 a.m. (ET).

Round 2

Bid deadline:	March 12, 2009, at 3:00 p.m. (ET);
Proposed Cure Amounts filed:	March 23, 2009;
Auction:	March 24, 2009, at 10:00 a.m. (ET);

Notice of Potential Purchaser: On or before the business day upon the conclusion of the Auction;

Cure and adequate assurance objection deadline: March 29, 2009, at 12:00 p.m. (ET);

Sale hearing: March 30, 2009, at 10:00 a.m. (ET).

Round 3

Bid deadline: March 12, 2009, at 3:00 p.m. (ET);

Proposed Cure Amounts filed: April 8, 2009;

Auction: April 9, 2009, at 10:00 a.m. (ET);

Notice of Potential Purchaser: On or before the business day upon the conclusion of the Auction;

Cure and adequate assurance objection deadline: April 13, 2009, at 12:00 p.m. (ET);

Sale hearing: April 14, 2009, at 10:00 a.m. (ET).

9. Pursuant to the Sale Procedures, the Landlords will not know with certainty, the identity of any proposed assignee until, at the earliest, the conclusion of the Auction, or more likely, the next day. If there is a contested assignment, the Landlords will be severely disadvantaged because they will have as few as one (1) or at the most three (3) business days depending on which round of auction, to complete all of the following: assess the proposed assignee and its adequate assurance information; determine whether the proposed assignee's use of the premises will violate any radius or use restrictions or disrupt the tenant mix in the affected shopping center; conduct discovery; draft (and file) an objection; and prepare for a contested hearing.

10. The Landlords should be afforded a minimum of ten (10) business days from the conclusion of each Auction to determine whether the proposed assignee is acceptable and has provided the Landlords with adequate assurance of future performance. Alternatively, any hearing on less than ten days from notice of the proposed assignee and receipt of adequate assurance information should only be a status conferences with regard to any contested lease assignment issues.

11. If the Landlords object to a proposed assignee and timely notify the Debtors, Bankruptcy Rules 7026 and 7028 through 7037, made applicable to contested matters by Bankruptcy Rule 9014, apply. As such, at a minimum, the Landlords should be entitled to an expedited discovery period of fourteen (14) days, or in the alternative, a status conference at the proposed sale hearing to determine an appropriate discovery schedule. The Landlords should also be granted an additional four (4) days after the close of the discovery period within which to file a supplemental objection to the proposed assignment.

12. The Landlords also request that in the event of a contested assignment, the Debtors be required to immediately provide a list of any known witnesses that would testify and a list of any known exhibits that would be put into evidence by the Debtors and/or the proposed assignee in support of the proposed assignment.

13. The Landlords' suggested timeline to assess a proposed assignee, and the proposed assignee's financials, to conduct discovery if the Landlords object to a proposed assignee, and to prepare for trial are reasonable considering that the proposed assignee, if successful, is going to be operating a store at the Landlords' shopping center. The Debtors' need to conduct a quick sale of its Leases should not be used as a justification to expunge the Landlords' rights to defend their property from an unwanted tenant.

**B. Landlords Should Not Be Required To Bid
Their Full Cure Amounts**

14. The Bidding Procedures require that Landlords credit bid their full Cure Amount and provide supporting documentation for the Cure Amount. The proposed Bidding Procedures require that “[I]n the event a Lessor submits an offer

that contemplates a credit bid, such Lessor may credit bid not less than the full Cure Amount (as defined in the Bidding and Rejection Procedures Order) and/or any rejection damages claim; provided, that the Lessor must include as part of its bid adequate supporting information/documentation to substantiate (i) the difference between the Proposed Cure Amount (as defined in the Bidding and Rejection Procedures Order) and the Cure Amount (the “Cure Difference”) and/or (ii) such rejection damages claim; . . .”

Motion, Exhibit 1 – Bidding Procedures, at p. 5.

15. The Debtors fail to cite to any authority to justify the requirement that Landlords credit bid their entire Cure Amount and document the Cure Amount in detail in connection with such bidding. Nor, is there any reason to impose a restriction on Landlords’ bids that does not apply to all bidders. Landlords with a substantial Cure Amount should not be required to forfeit the entire cure amount to participate in the auction process. Requiring the Landlords to provide detailed support for their Cure Amounts before the Debtors file their Proposed Cure Amounts or the Landlord has been identified as the successful bidder is also an unnecessary burden that will only serve to chill bidding.

C. The Debtors' Request For A Waiver Of the 10-Day Automatic Stay Under Bankruptcy Rules 6004(h) And 6006(d) Should Be Denied

16. The Debtors request that the Court waive the rights provided to the Landlords under Bankruptcy Rules 6004(h) and 6006(d).² A waiver of the ten day stay provided by Bankruptcy Rules 6004(h) and 6006(d) should only be granted when a debtor has made an “evidentiary showing of a business exigency requiring a closing within 10 days.” *See In re PSINet, Inc.*, 268 B. R. 358, 379 (Bankr. S.D.N.Y. 2001) (cause for a waiver of rules 6004[(h)] and 6006(d) is not established by a generalized assertion that an expedited closing is required).

17. As the advisory committee's notes to these rules reflect, a stay pending appeal is crucial to preserve the Landlords' right to contest an order authorizing the assignment of the Leases. Without the protections of Bankruptcy Rules 6004(h) and 6006(d), the Landlords' due process rights to appeal any sale order entered by the Court would be terminated upon consummation of the sale. *See* Fed. R. Bankr. P. 6004 and 6006 advisory committee's note.

18. Any appeal, even if leave to appeal were granted, would be rendered moot by the valid assignment of the Leases. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 298 (3d. Cir. 2000) (if a stay of a sale of a lease is not obtained, any appeal becomes moot). To address this issue, Bankruptcy Rule 6006(d) provides sufficient time for a party to request a stay pending appeal of an order authorizing the assignment of a lease under section 365(f) of the Bankruptcy Code before the assignment is consummated. *See* Fed. R. Bankr. P. 6006 advisory committee's note. Similarly, Bankruptcy Rule 6004(h) provides sufficient time for a party to request a stay

² Bankruptcy Rule 6004(h) states: An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise. Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) states: An order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise. Fed. R. Bankr. P. 6006(d).

pending appeal of an order authorizing the use, sale or lease of property under section 363(b) of the Bankruptcy Code before the order is implemented. *See* Fed. R. Bankr. P. 6004 advisory committee's note.

19. Considering the consequences of failing to obtain a stay, it would be extremely prejudicial and inequitable to deprive the Landlords of the crucial ten day period provided in Bankruptcy Rules 6004(h) and 6006(d) to seek a stay of the order authorizing the assignment of the Leases pending the outcome of an appeal. This is particularly true, where, as in this case, the Debtors have failed to make any evidentiary showing or provide any competent factual or legal justification for the requested waiver. As such, the Court should not grant a waiver of the stay.

CONCLUSION

WHEREFORE, the Landlords respectfully request the Court enter an order

(i) denying the Motion as set forth above; (ii) modifying the Sale Procedures consistent with the Landlords' proposed sale procedures; (iii) modifying the Bidding Procedures to enable Landlords to credit bid less than their full Cure Amount; and (iv) granting such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 11, 2009

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EXHIBIT A

<u>Developers Diversified Realty Corporation</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Brook Highland	Birmingham	Alabama
	Circuit City – Dothan	Dothan	Alabama
	Buena Park Place (Power Center)	Buena Park	California
	Circuit City – Culver City	Culver City	California
	Circuit City – Highland Ranch	Highland Ranch	California
	Carillon Place	Naples	Florida
	Cortez Plaza	Bradenton	Florida
	Homestead Pavilion	Homestead	Florida
	The Shops at Midtown Miami	Miami	Florida
	Walks at Highwood Preserve I	Tampa	Florida
	Skyview Plaza	Orlando	Florida
	Circuit City – Rome	Rome	Georgia
	Woodfield Village Green	Schaumburg	Illinois
	Merriam Village	Merriam Village	Kansas
	Grandville Marketplace	Grandville	Michigan
	Green Ridge Square II	Grand Rapids	Michigan
	1000 Turtle Creek Drive	Hattiesburg	Mississippi
	Crossroads Center	Gulfport	Mississippi
	Hamilton Commons	Mays Landing	New Jersey
	Route 22 Retail Shopping Center	Union	New Jersey
	Southern Tier	Horseheads	New York
	Union Consumer	Cheetowaga	New York

	Square II		
	Beaver Creek Crossings South	Apex	North Carolina
	Circuit City – Cary	Cary	North Carolina
	River Hills	Asheville	North Carolina
	Sycamore Commons	Matthews	North Carolina
	Wendover II	Greensboro	North Carolina
	Peach Street Square II	Erie	Pennsylvania
	Township Marketplace	Monaca	Pennsylvania
	Plaza del Norte	Hatillo	Puerto Rico
	Columbiana Station	Columbia	South Carolina
	The Point	Greenville	South Carolina
	Wando Crossing	Mt. Pleasant	South Carolina
	Town & Country I	Knoxville	Tennessee
	Family Center at Riverdale	Riverdale	Utah
	Creeks at Virginia Center	Glen Allen	Virginia
	Fairfax Town Center	Fairfax	Virginia
	Loisdale Center	Springfield	Virginia
	Circuit City – Olympia	Olympia	Washington
<u>General Growth Properties Inc.</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Alexandria Mall	Alexandria	Louisiana
	Boise Town Plaza	Boise	Idaho
	Boulevard Mall	Las Vegas	Nevada
	Burbank Town Center	Burbank	California
	Deerbrook Mall	Humble	Texas
	Eastridge Mall	San Jose	California
	Mall of Louisiana	Baton Rouge	Louisiana
	Montclair Plaza North	Montclair	California
	Northridge	Northridge	California

	Fashion Center		
	The Shoppes at River Crossing	Macon	Georgia
	Steeplegate Mall	Concord	New Hampshire
	Parks at Arlington	Arlington	Texas
	Willowbrook	Houston	Texas
	Woodlands	The Woodlands	Texas
Weingarten Realty Investors			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
545	Overton Park Plaza	Fort Worth	Texas
838	Colonial Plaza	Orlando	Florida
3304	Oracle Wetmore	Tucson	Arizona
3307	Pavilion at San Mateo	Albuquerque	New Mexico
3418	Marketplace at Seminole Towne Center	Sanford	Florida
3504	Moore Plaza	Corpus Christi	Texas
	River Point at Sheridan	Sheridan	Colorado
Basser-Kaufman			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
3724	Fellsway Plaza	Saugus	Massachusetts
3146		Springfield	Massachusetts
Philips International Holding Corp.			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Palm Springs Mile	Hialeah	Florida
Regency Centers			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Powell Street Plaza	Emeryville	California
	Brea Marketplace	Brea	California
AAC Management Corp.			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	AAC Cross County Mall	Yonkers	New York

Jones Lang LaSalle Americas			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Mall at Whitney Field	Leominster	Massachusetts
	Hanover Mall	Hanover	Massachusetts
Continental Properties			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
3175	Fountain Square Shopping Center	Brookfield	Wisconsin
Benderson			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Monroeville	Pittsburgh	Pennsylvania
	Westland	Westland	Michigan
		South Naples	Florida
	Waterford Station	Waterford	Connecticut
	Colonial Square Town Center	Fort Myers	Florida
	Gateway Shops	Naples	Florida
	St. Lucie West Town Center	Port St. Lucie	Florida
	University Center	University Park	Florida
3831	Market Square	Henrietta	New York
	Eastview Mall	Victor	New York

CERTIFICATE OF SERVICE

That on the 11th day of February, 2009 I caused the Limited Objection to the Debtors' Motion for Orders Under Bankruptcy Code Sections 105, 363 and 365 (I) Approving Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases, (II) Setting Sale Hearing Dates and (III) Authorizing and Approving (A) Sale of Certain Unexpired Nonresidential Real Property Leases Free and Clear of All Interests, (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Leases and (C) Lease Rejection Procedures to be served upon the following via priority overnight; and via the electronic case filing system.

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